IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 222 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
RAJESHBHAI S VADERA - Respondent

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Appearance :
MR. M.A. PATEL, LD. APP for Appellant :
NOTICE SERVED for Respondent:

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 08/11/2006

ORAL JUDGMENT

1. The Appellant State of Gujarat has preferred this appeal under Section 378 of the Code Of Criminal Procedure, 1973, challenging the judgment & order of

acquittal dated 30/11/1992 passed by learned JMFC, Amreli in Criminal Case No. 1304 of 1992, acquitting the present respondent of the charges punishable under Section 66 (1) (B) and 85 (1) (3) of the Bombay Prohibition Act.

2. This Court (Coram: R.D. Vyas, J) granted leave to appeal and the appeal was admitted on 20/9/1993. Though served none appears for the respondent.

3. Shri. Patel, learned APP has canvassed submissions on behalf of the appellant state.

4. The facts leading to filing of the present appeal deserves to be set out as under.

The original accused / present respondent was charged for commission of offence as stated herein above. The information was registered as No: II-337/1991 on 21/11/1991. After due investigation charge sheet was filed on 30/4/1992. The charge was that the accused on 21/11/1991 at 15.30 hours on the public road was found to be in intoxicated condition by consuming alcohol. The accused denied the charge and sought the trial to be commenced. After recording evidence the court recorded further statement of the accused under section 313 of the Cr.P.C. The accused denied the same and after the trial, the trial court has recorded acquittal of the accused vide its judgment & order of acquittal dated 30/11/1992. Being aggrieved by the said order of acquittal the State has preferred this appeal.

5. Shri. Patel has argued that learned Magistrate erred in appreciating evidence of the prosecution

witnesses and therefore the judgment under challenge deserves to be quashed and set aside. Shri. Patel has further submitted that the medical evidence on record has not been appreciated in its true perspective and therefore the order of acquittal deserves to be quashed and set aside. That the trial court ought to have recorded conviction in view of the evidence on record. This Court is unable to accept the submission of Shri. Patel, learned APP for the appellant State. The case of the prosecution has not been supported by panch witnesses. The other witnesses are police witnesses and therefore they are treated to be interested witnesses. So far as the evidence of doctor is concerned it has been recorded by the trial court that the necessary averment as to how the blood was handled has conspicuously been absent and therefore the acquittal has been recorded. There ought to have been positive statement in the deposition of the doctor that in the entire process of collecting blood from the person of the accused at no stage alcohol was applied or used. In absence of such statement the benefit of doubt had been accorded to the accused that the prosecution can not be said to have proved their case beyond reasonable doubt. The trial court recorded the finding in respect of Rule 4 and on that count also the order of acquittal has been recorded.

6. This Court is mindful that in the acquittal appeal the findings unless shown to be perverse and resulting into miscarriage of justice, same need not be disturbed. Accordingly, this Court is of the considered view that the judgment & order of acquittal dated 30/11/1992 does not

call for any interference and the appeal accordingly stands dismissed.

[S.R. BRAHMBHATT, J]

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